

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

MARILYN T. THOMAS, Administrator
of the Estate of ALBERT T. THOMAS,
Deceased

Plaintiff

v.

EARL BAYNOR, JR. TRUCKING, INC. d/b/a
BAYNOR, INC. and RODNEY V. SHEPHERD
and PERDUE FARMS, INC. a/k/a PERDUE,
INC. and PERDUE TRANSPORTATION
INCORPORATED

Defendants

Civil Action No: 2:16-cv-588

FINAL ORDER

THIS MATTER came before the Court upon Motion for Approval of Compromise Settlement of the wrongful death claim of Albert T. Thomas, deceased, by and through the Administrator of the Estate of Albert T. Thomas, Marilyn T. Thomas, by counsel of record, pursuant to §8.01-55, Code of Virginia (1950), as amended, for hearing and the Court, after review of the Motion for Approval of Compromise Settlement of the Wrongful Death claim of Albert T. Thomas and argument thereon, makes the following findings and rulings as follows:

(a) On or about September 4, 2014, the plaintiff's decedent, Albert T. Thomas, was involved in a motor vehicle crash on Route 13 in the County of Northampton, Virginia when he was struck by a tractor trailer driven by Rodney V. Shepherd arising out of his employment with Earl Baynor, Jr.

Trucking, Inc. d/b/a Baynor, Inc. who was hauling a trailer leased by Perdue Transportation Incorporated.

(b) Albert T. Thomas died on September 5, 2014 in the City of Norfolk, Virginia.

(c) At the time of the death of Albert T. Thomas, he was 50 years of age and was survived by the following class and beneficiaries, pursuant to §8.01-53, Code of Virginia (1950), as amended:

- (i) Marilyn T. Thomas - wife and administrator of the estate
- (ii) KeShauna T. Crippen - daughter
- (iii) Ke'yanna D. Toy - daughter
- (iv) Keondra D. Toy - son
- (v) Marcus D. Collins - son
- (vi) Latasha Westbrook - daughter

All of whom are over the age of eighteen.

(d) Marilyn T. Thomas qualified as the Administrator of the Estate of Albert T. Thomas on December 2, 2014 in the Circuit Court for the County of Northampton, Virginia for purposes pursuant to §64.2-454, Code of Virginia (1950), as amended, and is exercising her authority to compromise the wrongful death claim under §8.01-55, Code of Virginia (1950), pursuant to the powers granted her under §64.2-105 and 106, Code of Virginia (1950), as amended.

(e) Marilyn T. Thomas has brought this wrongful death action currently pending before the United States District Court for the Eastern District of Virginia, Norfolk Division, against the named defendants to which the estate is a party pursuant to §8.01-50, Code of Virginia (1950), as amended.

(f) The parties agree and so represent to the Court that the circumstances surrounding the death of Albert T. Thomas are such as to render questionable the liability or extent of liability of the named Defendants. Nevertheless, and without in any way admitting negligence or liability, on the part of the defendants, the plaintiff and defendants have agreed to compromise the aforementioned claim for the total sum indicated herein.

(g) Under all of the facts and circumstances herein involved as set forth by agreement of counsel of record, the Court finds ^{m36} ~~that~~ this settlement to be a fair and reasonable compromise of any and all claims, including, but not limited to, any claim for consortium, loss of society, care, services, support or companionship, cost, expenses or compensation against the named Defendants arising out of the injuries and death of Albert T. Thomas.

(h) That all of the class of beneficiaries set forth under paragraph (c) (i) through (vi) herein, pursuant to §8.01-53, eligible to receive damages pursuant to §8.01-52 and §8.01-54 have been given notice of this hearing of the proposed compromise and have executed affidavits in support of the proposed distribution as set forth in Exhibits B, C, D, E, and F of the Motion for Approval of Compromise Settlement, incorporated herein by reference.

(i) Counsel for the defendants advises and the Court so finds, that the following settlement proceeds are to be tendered to the Administrator of the Estate and counsel for plaintiff as follows:

(i) On behalf of Earl Baynor, Jr. Trucking and Rodney V. Shepherd:

(aa) Atlantic Casualty Insurance proceeds - \$968,061.00

(bb) Earl Baynor Trucking, Inc. proceeds - \$81,939.00

(ii) On behalf of Perdue Farms, Inc. a/k/a Perdue, Inc. and Perdue Transportation Incorporated:

(aa) Broadspire proceeds - \$1,000,000.00

Total settlement proceeds - \$2,050,000.00

(j) The Court finds that the proposed attorneys fees and incurred litigation expenses, per contract, as well as ^{by} ~~as~~ a finding by the Court, is reasonable and shall be approved as follows:

(a) Law office of Michael A. Kernbach:

Attorneys Fee - \$ 341,325.00

Litigation Expenses - \$ 43,933.51

(b) Law Office of Morgan G. Adams:

Attorneys Fee - \$ 341,325.00

Litigation Expenses - \$ 63,923.70

(k) The Administrator of the Estate advises and the Court so finds that funeral and burial expenses which were incurred in the Commonwealth of Virginia have been paid and that the Administrator of the Estate does not claim nor desires specific reimbursement of the funeral and burial expenses from the proceeds of the compromise settlement.

(l) The Administrator of the Estate advises and the Court so finds that medical expenses incurred as a result of the treatment of Albert T. Thomas prior to his death in the Commonwealth of Virginia have been paid and that there are no known liens which have been ~~filed~~ ^{filed} by any health care provider nor have any payments been paid by Medicare. The Administrator of the Estate

does not claim nor desires specific reimbursement of any medical expenses which have been paid by the estate and shall make payment of any reimbursement or liens, if sought or claimed, out of the proceeds.

(m) The Court, upon review of the Motion, attached affidavits and representation of the Administrator of the Estate, Marilyn T. Thomas, finds and so Orders that the class and beneficiaries shall be entitled, pursuant to §8.01-53, to the following payments out of the proceeds, net of attorneys fees and litigation expenses, tendered by the defendants pursuant to paragraph (i) of this Order:

- (i) Marilyn T. Thomas - \$ 800,000.00
- (ii) KeShauna T. Crippen - \$ 109,000.00
- (iii) Ke'yanna D. Toy - \$ 109,000.00
- (iv) Keondra D. Toy - \$ 109,000.00
- (v) Marcus D. Collins - \$ 50,000.00
- (vi) Latasha Westbrook - \$ 50,000.00

(n) The Court further Orders that the balance of any uncommitted distribution of funds held in the trust account of Michael A. Kernbach, Esquire for payment of litigation expenses incurred within thirty (30) days following entry of the Order shall be distributed to Marilyn T. Thomas as an additional payment under §8.01-53.

(o) The Court finds, upon representation of the Administrator of the Estate and Counsel of record, that there is no other person or entity who may be affected by this proposed compromise or distribution.


(p) The Court finds that all of the parties agree that the proposed compromise settlement is fair, reasonable, and in the best interests of the statutory beneficiaries of Albert T. Thomas, deceased and the named defendants.

WHEREFORE, it is ORDERED and ADJUDGED that the wrongful death claim of the Administrator of the Estate of Albert T. Thomas shall be and hereby is compromised, settled and discharged under the terms as aforesaid and it is further

ORDERED and ADJUDGED that upon entry of the Order approving the compromise settlement of the wrongful death claim of the Administrator of the Estate of Albert T. Thomas, all defendants are hereby released from any claim or cause of action of any type arising from the incident of September 4, 2014, and that the defendants and this matter shall be dismissed with prejudice; and it is further

ORDERED and ADJUDGED that in return for payment of the compromise settlement as outlined in the Motion and this Order, the Administrator of the Estate may, upon completion of these proceedings, request that the Commissioner of Accounts discharge Marilyn T. Thomas as Administrator of the Estate of Albert T. Thomas and relieve her of any further statutory duties in this matter.

DATED and ENTERED this 25th day of August, 2017



Mark S. Davis
United States District Judge
The Honorable Mark S. Davis
Judge, United States District Court

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